

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA)
)
)
v.) Case No.: 2:05cr237-A
)
)
CAROL JARRETT)

MOTION TO INSPECT AND FOR PRESERVATION OF EVIDENCE

COMES NOW the Defendant, Carol Jarrett, by and through her undersigned counsel, Jennifer A. Hart, and moves this Honorable Court to enter an Order prohibiting the destruction of the physical evidence (marijuana plants) in this case and permitting defense counsel to inspect same.

As grounds for granting this Motion, Defendant would show the following:

1. On November 15, 2005, Carol Jarrett and her husband Billy Jarrett were charged with possession with intent to distribute 100 or more marijuana plants, in violation of 21 U.S.C. § 841(a)(1).¹
2. Ms. Jarrett was arraigned and pled not guilty to the charge on November 30, 2005.
3. Critical to a determination of Ms. Jarrett's potential sentencing exposure is the number of marijuana plants actually manufactured. Pursuant to 21 U.S.C. § 841(b)(1)(B)(vii), a person convicted of manufacturing 100 or more marijuana plants is subject to a 5 year mandatory minimum term of imprisonment. Conversely, a person convicted of manufacturing less than 100 plants does not face a mandatory minimum sentence but rather, will be subject to the applicable

¹ Both Jarretts were also charged with possession of a shotgun during and in furtherance of the commission of manufacturing marijuana, in violation of 18 U.S.C. 924(c)(1)(A)(i).

advisory guideline range.

4. In this case, law enforcement officers conducted a search of the Jarrett's residence.

At the conclusion of that search, the officers presented Mr. And Mrs. Jarrett with a list of the items seized from the residence. That list indicated that approximately 81 marijuana plants had been seized. (This list is attached hereto as Exhibit A).

5. Additionally, a local newspaper reported that 81 marijuana plants had been seized from the Jarrett's home. (This article is attached hereto as Exhibit B). The writer of the article indicated that he had received this information from the Elmore County Sheriff's Department.

6. For 81 marijuana plants, the United States Sentencing Guidelines establishes a sentencing range of 10 to 16 months.² See U.S.S.G. § 2D1.1.

7. Due to the great disparity in the potential sentencing exposure, and in order that defense counsel can adequately advise Ms. Jarrett regarding her case, a determination of the exact drug quantity is crucial.

8. The Government has advised that it intends to call at trial a police officer to testify regarding the number of plants actually seized. However, the term "plant" has a specific legal definition for purposes of sentencing. In the Eleventh Circuit, cuttings and seedlings **are not** "marijuana plants" unless there is "some readily observable evidence of root formation." *United States v. Foree*, 43 F.3d 1572 (11th Cir. 1995). Therefore, inspection of the evidence is necessary to determine how many actual plants were present.

WHEREFORE, based upon the foregoing, Ms. Jarrett respectfully requests that this Court

² This sentencing range presumes that Carol Jarrett has a criminal history category of I and would qualify for a 2-level reduction for acceptance of responsibility.

issue an Order directing the Government that it is prohibited from destroying any of the marijuana plants and to permit inspection of such evidence.

Dated this 4th day of January 2006.

Respectfully submitted,

s/Jennifer A. Hart
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CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:
Tommie Hardwick, Assistant United States Attorney.

Respectfully submitted,

s/Jennifer A. Hart
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